

## ***5 Official Opinion of the Compliance Board 72 (2006)***

### **CLOSED SESSION PROCEDURES – WRITTEN STATEMENT – OMITTING IDENTITY OF THIRD PARTY WHOSE PROPOSAL WAS TO BE DISCUSSED, HELD NOT TO BE A VIOLATION – EXCEPTIONS PERMITTING CLOSED SESSIONS – BUSINESS RELOCATION, §10-508(A)(4) – DISCUSSION OF SALE OF COUNTY-OWNED LAND IN BUSINESS PARK, HELD TO BE WITHIN THE EXCEPTION**

October 17, 2006

*Mr. Craig O'Donnell*  
*Kent County News*

The Open Meetings Compliance Board has considered your complaint that the Kent County Commissioners violated the Open Meetings Act in two respects: by failing to provide a sufficiently descriptive written statement prior to closing a session on April 3, 2006, and by improperly invoking the “business relocation” exception, §10-508(a)(4),<sup>1</sup> as a basis for closing a session on June 20, 2006. For the reasons stated below, the Compliance Board finds that in neither instance was there a violation.

## **I**

### **Complaint and Response**

In a letter dated June 26, 2006, you complained that the Kent County Commissioners improperly relied on §10-508(a)(4) in closing a session to discuss the sale of certain county-owned land. The discussion topics involved proposals to purchase a lot in the Worton Business Park and a 15-acre site called the LaMotte Property. Under the reasoning in the complaint, land transactions involving the County are not encompassed by §10-508(a)(4). If the County were considering whether to buy land, it could close a meeting under §10-508(a)(3). But that exception does not apply to government sale of land, and neither, the complaint argued, does §10-508(a)(4). With the proper narrow construction, this exception should be limited to situations that involve the public body’s discussion of

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<sup>1</sup> All statutory references in this opinion are to the State Government Article, Annotated Code of Maryland.

“confidential competitive information” that it has received from a business. The exception is not to be “very broadly construed to cover anything to do with private business, negotiation or contracts,” which appeared to be the case in the closed meeting at issue.

In a second letter date June 30, you complained that the statement preceding the closed session on April 3 was legally insufficient. You focused in particular on the topic of the closed session: “Proposal from third party that county take action on behalf of Knocks Folly,” an historic house in Kent County. The complaint, inferring that the third-party proposal related to the cost of a possible suit against the State, argued as follows: “The phrase ‘third party’ is insufficient. Anyone hoping to involve the county in litigation should be named in the public record.” The Compliance Board decided to consolidate the two complaints and address both in a single opinion.<sup>2</sup>

In a timely response on behalf of the County Commissioners, County Attorney Thomas N. Yeager denied that the Act had been violated. With respect to the written statement preceding the closing on April 3, the response observed that the topic went “above and beyond boilerplate language and the minimum requirements of the Act.” The indication of the topic “clearly gives notice that there is potential legal action; it identifies the subject of the potential litigation, and it advises that the discussion was prompted by request from someone other than the Commissioners.”

With respect to the closing of the June 20 meeting, the response contended that the County Commissioners’ discussion fell squarely within §10-508(a)(4), the exception allowing a closed session “to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the state.” The response described Worton Business Park as “an economic development project consisting of a County-owned tract of land that has been subdivided into lots. The lots are available for purchase by businesses seeking to relocate and/or expand in Kent County. Because the County plans to sell the lots, as opposed to leasing them, any proposal from a business that is considering to relocate to the park would involve a purchase of a lot.” The response included minutes of the closed session, which the Compliance Board will maintain in confidence under §10-502.5(c)(2)(iii), indicating that the discussion was limited to the potential relocation or expansion of a business in the park.

The other matter of anticipated discussion in the closed session, “Proposal for purchase of LaMotte Property,” would have involved “economic development and

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<sup>2</sup> The letter of June 30 also contained allegations related to the notice of the meeting and minutes pertaining to it. By letter of July 17, 2006, these allegations were withdrawn.

business relocation/expansion,” according to the response, had such a discussion actually occurred. The response noted, however, that “there was no discussion among the Commissioners concerning this matter. The County Administrator simply reported that she would be attending a meeting with a prospective purchaser on the following day, and would later follow up with the Commissioners and with the county’s attorney. Therefore, the particular matters brought up on June 20, 2006 concerning this property were an executive [soon to be renamed administrative] function, and as such were not subject to the Open Meetings Act.”

## **II**

### **Analysis**

#### ***A. Written Statement Preceding April 3 Closed Session***

We agree with the County Commissioners that the indication of the topic complied with the Act. It was not mere boilerplate, but instead gave those in attendance sufficient information to judge that the discussion apparently fit within the exception cited as the basis for closing. There is no legal obligation, as suggested by the complaint, for the topic statement to have identified which third party proposed the action by the County.

#### ***B. Basis for Closing June 20 Meeting***

The complaint argued that §10-508(a)(4), allowing a closed session for a public body to “consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State,” must be narrowly construed. We agree. *See* §10-508(c). Thus, for example, in a prior opinion we held that the exception is limited to consideration of business relocation by private enterprises, not public entities. 2 *OMCB Opinions* 56 (1999) (Opinion No. 99-8).

A narrow construction, however, does not lead us to artificially contract the meaning of the words used. A closed-session discussion is permitted about a business proposal “to locate, expand, or remain in the State.” Such a proposal could involve a host of considerations, including the sale or other transfer of government land. Obviously, businesses that are considering relocation or expansion will be concerned about the site, including acquisition costs. From the perspective of a public body, the land that it owns might be an important bargaining chip. Economic development deals of the kind described in §10-508(a)(4) generally involve a subsidy to attract the business investment that, in the long run, is thought to justify the subsidy. Subsidies can be of various kinds, including the gift or below-market sale of land. This is particularly so when a county owns land that it is seeking to transform into a fully occupied industrial park. The characteristics of a business seeking to purchase land in an industrial park, the economic development benefits

and potential negative consequences of selling to a particular private business, offering price – all of these are directly related a public body’s discussion of a proposal for a business to locate in a particular site.

Our review of the closed session minutes of June 20 confirms that the Kent County Commissioners confined their discussion of the Worton Business Park matter to just such a proposal. There was no violation in this regard.

The minutes also confirm, as reported in the response, that the only discussion regarding the LaMotte Property was a brief report by the County Administrator about a forthcoming meeting with a potential purchaser. This informational report was an aspect of the County Commissioners’ general oversight or management of the County Administrator. Under §3-13B of the Kent County Code, the County Administrator “shall be responsible to County Commissioners for the proper administration of the affairs of office.” Therefore, this item was an executive function excluded from the Act. See 2 *OMCB Opinions* 24 (1998) (Opinion No. 98-9).

### **III**

#### **Conclusion**

In summary, the Open Meetings Compliance Board finds that there was no violation by the Kent County Commissioners in the preparation of a written statement prior to the closing of the meeting on April 3, 2006, nor was there a violation in the cited basis for closing the meeting on June 20, 2006.

OPEN MEETINGS COMPLIANCE BOARD

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